

PATENT
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant: Darren D. Cofer et al. Confirmation No.: 3315
Serial No.: 10/052,953 Examiner: Madeline Gonzalez
Filing Date: January 17, 2002 Group Art: 2859
For: METHOD AND APPARATUS FOR DETECTING OBJECTS
Docket No.: H0002091 (1100.1144101)

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PETITION UNDER 37 CFR § 1.181
TO WITHDRAW FINALITY OF OFFICE ACTION

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Assistant Commissioner for Patents
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office on the date shown below.

Lynn Thompson June 14, 2004
Lynn Thompson Date

Dear Sir:

Applicants hereby petition the Commissioner for withdrawal of the finality of the Office Action mailed April 15, 2004. The facts are as follows.

In the final Office Action mailed April 15, 2004, the Examiner stated that the finality of the previous Office Action had been withdrawn, but that the current Office Action was made final even with new grounds of rejection because Applicant's amendment necessitated the new grounds of rejection. The claims currently rejected, however, were not amended in the previous response.

A final Office Action was mailed November 12, 2003, rejecting claims 1-10 over the Heifler reference. In response, Applicants filed an amendment on January 20, 2004, in which

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Appl. No. 10/052,953
Amendment dated June 14, 2004
Reply to Office action dated April 15, 2004

only claim 22 was amended to overcome an objection based on lack of antecedent basis. Claim 22 was indicated as otherwise allowable. Claims 1-5 were not amended. After a telephone conference with the Examiner, Applicants filed a further response on March 12, 2004, in which no amendments were made.

In the current Office Action mailed April 15, 2004, claims 1-5 are now rejected over the Ng reference. This reference was submitted with an Information Disclosure Statement filed on September 13, 2002, prior to the first Office Action. The Examiner has changed the basis for rejecting claims 1-5 with no amendment from Applicants. As noted in MPEP § 706.07(a):

Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17 (p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

(Emphasis Added). Applicants submit that the current Office Action was thus improperly made final.

Applicants respectfully request withdrawal of the finality of the Office Action mailed April 15, 2004, and entry and consideration of the Amendment filed herewith. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully Submitted,

Darren D. Cofer et al

By their attorney

Date: June 14, 2004

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